

Coaxial Cable Construction and Testing Second Edition published by the Society of Telecommunications Engineers provides that "the support messenger of the coax cable shall be bonded to the telephone strand or other existing pole grounds in accordance with the utility company poles – lease agreement." Requiring a bond on every pole where a vertical ground wire exists ensures that servicemen of EAI and the non-qualified personnel, contractors and subcontractors of the Complainants are protected from injury that may be caused by electrical potentials.

281. EAI further states that most of the Complainants' plant was not constructed prior to 1985 but rather the vast majority of the old cable plant has been removed and replaced, and no longer exists due to total system rebuilds and/or upgrades.⁵⁰¹

282. EAI admits that the pole attachment agreement design specifications incorporated into the pole attachment agreements require power supplies to be mounted at least 12 feet from the ground as alleged in **Paragraph 78** of the Complaint. EAI denies the remaining allegations contained in Paragraph 78 of the Complaint.⁵⁰² EAI affirmatively states that the only time an equipment case may be placed at 11 feet is in spaces and ways subject to only pedestrians and only if the case is either nonmetallic or effectively grounded. Also, an equipment case subject to pedestrian traffic can only be lowered if the case is also effectively grounded. If the equipment case overhangs roads or streets or within road rights-of-way, the required clearance is 15 feet under the NESC.

copper. If a system is initially constructed with the minimum number of bonds required under the NESC, the system will become non-compliant in a very short period of time.").

⁵⁰¹ Declaration of Tony Wagoner at ¶ 40.

⁵⁰² See table 232-2 of the 1984 edition of the NESC.

283. As outlined above, EAI denies that permission has ever been given to the Complainants or their predecessors in interest to attach guy wires to EAI anchors as alleged in **Paragraph 79** of the Complaint. EAI admits that Section 2.4D of the pole attachment agreements allows the Complainants to attach to EAI anchors only after special written permission from EAI as alleged in Paragraph 79 of the Complaint. EAI admits that it is requiring the Complainants to set separate anchors for their attachments as alleged in Paragraph 79 of the Complaint, unless the Complainants perform necessary engineering analysis for each anchor to determine if the anchor is capable of withstanding the additional tension created by attachment of cable plant, as required by the NESC.⁵⁰³

284. EAI affirmatively states that to allow Complainants to attach to EAI anchors could violate the percentage loading requirements of anchors under Section 26, the Strength Requirements of the NESC. Short of the Complainants performing necessary calculations to determine that EAI anchors can withstand the additional tension created by the Complainants' messenger wire and that the load on anchors will not violate the NESC, the Complainants are not allowed to attach to EAI anchors. An overloaded anchor could either break or pull out of the ground which could further result in poles breaking and whole pole lines collapsing.⁵⁰⁴ EAI further states that the use of EAI anchors by the Complainants is yet another example of the Complainants and/or their contractors disregarding the specifications set forth in the pole attachment agreements and the provisions of the NESC in attaching to EAI anchors without requesting or receiving permission from EAI.

⁵⁰³ Declaration of Gary Bettis at ¶ 24; Declaration of Bernard Neumeier at ¶ 20; Declaration of Wayne Harrell at ¶ 15.

⁵⁰⁴ Declaration, Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc., at ¶¶ 61-63.

the Complaint. EAI affirmatively states that Storer Cable TV, Inc. began building the cable system in Little Rock, Arkansas in 1981 and completed the initial build-out of the system in 1983.⁵¹⁰ In 1987 and 1988, Comcast built the cable system in West Pulaski County in the Chenal Valley area and North of State Highway 10.⁵¹¹ In 1991 and 1992, Comcast performed a rebuild project to change out electronics, both active electronic parts and passive parts, in the Little Rock area.⁵¹² Beginning in 1999, Comcast upgraded the cable plant in Little Rock by overlashing fiber optic cable and replacing all electronic components, both active electronic parts and passive parts. This upgrade was completed in early 2001.⁵¹³

293. EAI admits the allegations contained in **Paragraph 87** of the Complaint. EAI affirmatively states that there are three separate pole attachment agreements covering cable plant owned by Comcast for different geographic areas, these are listed as follows: (i) pole attachment agreement between Riverside Cable TV, Inc. and Arkansas Power & Light made effective June 2, 1986, for the City of Little Rock and Camack Village; (ii) pole attachment agreement between Storer Cable TV, Inc. and Arkansas Power & Light made effective June 2, 1986, for the Cities of Jacksonville, North Little Rock, Sherwood and surrounding areas in Pulaski County, Arkansas; (iii) pole attachment agreement between Storer Cable TV, Inc. and Arkansas Power & Light made effective June 2, 1986, for the City of Bryant and rural Pulaski County, Arkansas south of the Arkansas River.

⁵¹⁰ Declaration of John Tabor at ¶ 6.

⁵¹¹ Declaration of John Tabor at ¶ 6.

⁵¹² Declaration of John Tabor at ¶ 6.

⁵¹³ Declaration of John Tabor at ¶ 7.

294. EAI denies the allegations contained in **Paragraph 88** of the Complaint. EAI affirmatively states that much of the cable system which existed in Little Rock prior to 1986 has been replaced and/or removed through system rebuilds and/or upgrades.⁵¹⁴ In fact, due to the outdated nature of Comcast's plant, the City of Little Rock required Comcast to upgrade its facility beginning in 1999.⁵¹⁵ EAI further states that Comcast's construction practices and failure to maintain cable plant in safe condition and thorough repair have been a source of contention between EAI and Comcast for a number of years.⁵¹⁶ EAI further states that on information and belief, Comcast plant also suffered damages as a result of the ice storm which were never repaired and further magnified the issues which EAI was experiencing with cable related damages, outages and customer calls.⁵¹⁷

295. EAI denies the allegations contained in **Paragraph 89** of the Complaint. EAI affirmatively states that Comcast has constructed more than 200 miles of cable plant in central Arkansas since June 1986,⁵¹⁸ and that EAI has never allowed Comcast or its predecessors to make attachments in non-compliance with the NESC or the design specifications set forth in Comcast's pole attachment agreements with EAI.⁵¹⁹ EAI further states that the vast majority of the violations reported by USS to Comcast do not comply with any edition of the NESC.⁵²⁰

⁵¹⁴ Declaration of John Tabor at ¶ 7.

⁵¹⁵ Declaration of Thomas Carpenter at ¶ 5.

⁵¹⁶ Declaration of Jim Lovell at ¶ 5.

⁵¹⁷ Declaration of Gary Bettis at ¶ 13.

⁵¹⁸ Declaration of Tony Wagoner at ¶ 40; Declaration of John Tabor at ¶ 7.

⁵¹⁹ Declaration of Gary Bettis at ¶ 8.

⁵²⁰ Declaration of Wilfred Arnett at ¶ 23; See Comcast Violations Progress Report attached as Exhibit "82."

296. EAI admits that in 1999, Comcast began an upgrade of the cable system in the Little Rock, Arkansas area as alleged in **Paragraph 90** of the Complaint. EAI denies the remaining allegations contained in Paragraph 90 of the Complaint. EAI affirmatively states that EAI did not receive any notification from Comcast either prior to or upon completion of the upgrade project.⁵²¹ This project was mandated by the City of Little Rock as a result of the outdated condition of Comcast plant.⁵²² This upgrade project involved overlashing existing coaxial cable with fiber optic cable which required replacement of all electronic components, both active electronic parts and inactive parts, throughout the entire cable system. EAI states that replacement of electronic components was required on at least 95% of all poles to which Comcast was attached in the Little Rock area.⁵²³

297. EAI is without information sufficient to form a belief as to the allegations contained in the second sentence of **Paragraph 91** and, therefore, denies the same. EAI denies the remaining allegations contained in Paragraph 91 of the Complaint. EAI affirmatively states that the upgrade project required replacement of all electronic components throughout the entire cable system which in turn required Comcast to perform substantial work on at least 95% of all poles with Comcast attachments.⁵²⁴

⁵²¹ Declaration of Gary Bettis at ¶ 12.

⁵²² Declaration of Thomas Carpenter at ¶ 5.

⁵²³ Declaration of John Tabor at ¶ 7.

⁵²⁴ Declaration of John Tabor at ¶ 7.

298. EAI admits the allegations contained in **Paragraph 92** of the Complaint. EAI affirmatively states that Comcast did not provide any notification to EAI when this construction was completed.⁵²⁵

299. EAI denies the allegations contained in **Paragraph 93** of the Complaint. EAI affirmatively states that EAI did not receive any notification from Comcast either prior to or upon completion of this project.⁵²⁶

300. EAI admits that poles owned by EAI in the areas served by Comcast suffered damage due to the ice storm in December 2000, as alleged in **Paragraph 94** of the Complaint. EAI denies the remaining allegations contained in Paragraph 94 of the Complaint. EAI affirmatively states that the cost associated with ice storm restoration work was recovered by EAI through proceedings before the Arkansas Public Service Commission.⁵²⁷ EAI further states that Comcast cable plant also suffered extensive damage during the ice storm of December 2000, which either has not been repaired or when repaired failed to comply with the NESC and/or specifications of EAI.⁵²⁸

301. EAI admits the allegations contained in **Paragraph 95** of the Complaint.

302. EAI denies the allegations contained in **Paragraph 96** of the Complaint. EAI affirmatively states that the representatives of Comcast at the meeting on April 18, 2001, Mark Gardner, Director of Technical Operations, and Bob Green, Construction / Maintenance

⁵²⁵ Declaration of Gary Bettis at ¶ 12.

⁵²⁶ Declaration of Gary Bettis at ¶ 12.

⁵²⁷ Declaration of Steve Strickland at ¶ 4.

⁵²⁸ Declaration of Gary Bettis at ¶ 13.

Manager, were told of the specific locations and instances where damages and outages had recently occurred due directly to non-compliance of NESC clearance requirements by Comcast cable.⁵²⁹

303. EAI denies the allegations contained in **Paragraph 97** of the Complaint.⁵³⁰

304. EAI denies that the representatives of Comcast expressed any concern that Comcast plant did not have anything to do with the damages and outages experienced by EAI due to the condition of Comcast plant as alleged in **Paragraph 98** of the Complaint.⁵³¹ EAI admits that Comcast representative, Bob Green, Construction / Maintenance Manager, submitted a one paragraph document entitled "Comcast Action Plan" dated April 20, 2001, which is attached as Exhibit "21." The Comcast Action Plan states that "due to the upgrade of our plant, we have overlashed cable and added additional strand footage causing clearances to be out of specification in some locations."⁵³² Comcast agreed to begin an "aggressive plan" to inspect all 1,200 miles of Comcast aerial plant in central Arkansas within 120 days beginning on April 23, 2001. The Comcast Action Plan noted that 14 miles of aerial plant would have to be inspected each day in order to accomplish this plan.⁵³³ The "Comcast Action Plan" also stated that maps of the area inspected would be maintained at Comcast's offices.⁵³⁴

⁵²⁹ Declaration of Gary Bettis at ¶ 14. See Comcast trouble tickets attached as Exhibit "90."

⁵³⁰ See Comcast trouble tickets attached as Exhibit "90."

⁵³¹ Declaration of Gary Bettis at ¶ 14.

⁵³² See Comcast Action Plan attached as Exhibit "21."

⁵³³ See *id.*

⁵³⁴ See *id.*

305. EAI is without information sufficient to form a belief as to whether Comcast immediately implemented its so-called "action plan" as alleged in **Paragraph 99** of the Complaint and, therefore, denies the same.

306. EAI admits that on August 21, 2001, Comcast representative, Bob Green, submitted the Follow-Up Comcast Action Plan attached as Exhibit "23" which stated that all of Comcast's aerial plant had been "ridden out and checked" and that Comcast had found and repaired "discrepancies" at 125 separate locations as alleged in **Paragraph 100** of the Complaint. EAI affirmatively states that despite these representations that Comcast had inspected all of its plant and corrected all "discrepancies" found, EAI continued to experience damages, electric service outages, and emergency customer calls directly related to Comcast cable facilities.⁵³⁵ EAI documented 13 separate instances of electrical outages and damages when vehicles snagged low-hanging Comcast cable between August 21, 2001, and April 8, 2004, and 555 cases of customer emergency calls received between January 2001, and April 2004, which were the result of Comcast facilities.⁵³⁶

307. EAI admits that EAI retained USS in September 2001 as alleged in **Paragraph 101** of the Complaint, but denies the remaining allegations contained in Paragraph 101 of the Complaint. EAI affirmatively states that EAI retained USS to perform a sample inspection of two circuits involving Comcast attachments in December 2001, and that EAI and USS entered into a Standard Services Agreement effective December 1, 2001.⁵³⁷ This two-circuit test inspection took place after a random review of Little Rock poles conducted by Wilfred Arnett in

⁵³⁵ See Comcast trouble tickets attached as Exhibit "90."

⁵³⁶ See Comcast trouble tickets attached as Exhibit "90."

⁵³⁷ Declaration of David B. Inman at ¶ 8.

September 2001 revealed a high incidence of violations even after Comcast supposedly completed all repairs in August 2001.⁵³⁸

308. EAI admits that USS was initially hired to perform a sample inspection of attachments in central Arkansas and that EAI did not notify Comcast of the sample inspections as alleged in **Paragraph 102** of the Complaint. EAI denies the remaining allegations contained in Paragraph 102 of the Complaint. EAI affirmatively states that the December 2001 sample inspection involved cable attachments within two distribution circuits. The purpose of the sample inspection was to give EAI an independent professional evaluation of the condition of third party attachments within EAI's service area of central Arkansas. EAI did not advise USS prior to the sample inspection which CATV Companies served the central Arkansas area. If the sample inspection revealed a low percentage of safety violations for cable, EAI would not have pursued further safety inspections.⁵³⁹ However, the sample inspection revealed widespread violations and unsafe conditions.⁵⁴⁰

309. EAI admits the allegations contained in **Paragraph 103** of the Complaint. EAI affirmatively states that Comcast was provided inspection sheets for each pole containing safety violations found as a result of the sample inspection attached as Exhibit "87." During a meeting held on January 18, 2002, EAI requested Comcast to designate a representative to participate in the safety inspections, but Comcast refused to take any role in the inspection process.⁵⁴¹

⁵³⁸ Declaration of Wilfred Arnett at ¶ 5.

⁵³⁹ Declaration of David B. Inman at ¶ 7.

⁵⁴⁰ Declaration of Wilfred Arnett at ¶ 27; See report of December 2001 sample inspection attached as Exhibit "88."

⁵⁴¹ Declaration of David B. Inman at ¶ 8.

310. EAI denies the allegations contained in **Paragraph 104** of the Complaint. EAI affirmatively states that further safety inspections were performed only after sample inspections revealed a large percentage of attachments did not comply with the requirements of the NESC and the contractual specifications contained in the pole attachment agreements.⁵⁴² In fact, the sample inspections verified that cable facilities were not in safe condition and thorough repair resulting in the high incidents of damages, outages and emergency calls.⁵⁴³ EAI affirmatively states that the Complainants had ample opportunity to participate in the safety inspection process but refused to do so.⁵⁴⁴ EAI further states that the safety inspections performed to date are not part of any pre-ordained system-wide safety inspection program by EAI.⁵⁴⁵

311. EAI denies the allegations contained in **Paragraph 105** of the Complaint. EAI affirmatively states that the allegation EAI is attempting to upgrade its aerial plant at the expense of cable operators is without merit and misrepresents the content of the discussions held between Richard Stevens, Robert Gramling, and Cox employees at the meeting described in Paragraphs 187 – 189 of the Complaint and repeatedly referenced throughout the Complaint.⁵⁴⁶

312. If anything, the ratepayers of EAI are subsidizing the Complainants by virtue of:

- (i) Under-priced rental rates charged for permitted attachments;

⁵⁴² See Violation Progress Reports for Comcast, Alliance and WEHCO attached as Exhibits “82,” “83” and “84,” respectively.

⁵⁴³ Declaration of Gary Bettis at ¶ 18; Declaration of Bernard Neumeier at ¶ 20; *See* Comcast, Alliance and WEHCO trouble tickets attached as Exhibits “90,” “91” and “92,” respectively.

⁵⁴⁴ Declaration of David B. Inman at ¶¶ 8, 18.

⁵⁴⁵ Declaration of Michael Willems at ¶ 18.

⁵⁴⁶ Declaration of Richard Stevens at ¶¶ 3-7; Declaration of Robert Gramling at ¶¶ 3-6.

(ii) Complainants placing large numbers of attachments without notice to or permission of EAI and failing to pay any amount of rental for unauthorized attachments; and

(iii) EAI incurring costs of repairs for damages caused by the shoddy construction methods employed by the Complainants for attachments made to pole plants owned by EAI.

313. EAI admits that Comcast has received invoices from EAI for their equitably allocated portion of safety inspection costs as alleged in **Paragraph 106** of the Complaint. EAI denies the remaining allegations contained in Paragraph 106 of the Complaint. EAI affirmatively states that in 2002, some invoices sent to Comcast billing for inspection costs did not have accompanying documentation due to an oversight. However, beginning in August 2002, continuing through June 2003, Comcast was furnished detailed supporting documentation for these invoices.⁵⁴⁷ EAI further states that Comcast has been billed \$1,286,773 for its equitable portion of safety inspection costs.

314. EAI admits that Comcast requested more detail for invoices for inspection costs as alleged in **Paragraph 107** of the Complaint. EAI denies the remaining allegations contained in Paragraph 107 of the Complaint. EAI affirmatively states that beginning in August 2002, and continuing through June 2003, Comcast was furnished detailed supporting documentation for invoices some of which was redundant information which had been previously received by

⁵⁴⁷ See letter from David B. Inman, Joint Use Administrator, Entergy Arkansas, Inc., to Ronnie Colvin, Vice-President and General Manager, Comcast dated August 30, 2002, attached as Exhibit "24;" See letter from Webster Darling, Senior Counsel, Entergy Arkansas, Inc., to Marc Billingsley, Business Manager, Comcast, dated February 14, 2003, attached as Exhibit "67;" See letter from Webster Darling, Senior Counsel, Entergy Arkansas, Inc., to Kyle Birch, Senior Counsel, Comcast, dated March 11, 2003, attached as Exhibit "68;" See letter from Webster Darling, Senior Counsel, Entergy Arkansas, Inc., to Kyle Birch, Senior Counsel, Comcast, dated June 4, 2003, and accompanying documentation attached as Exhibit "26."

Comcast on invoices.⁵⁴⁸ Although Comcast has received invoices with all supporting documentation, including without limitation, actual employee timesheets, Comcast has refused to pay any amount of the safety inspection costs.⁵⁴⁹

315. EAI denies the allegations contained in **Paragraph 108** of the Complaint.

316. EAI denies the allegations contained in **Paragraph 109** of the Complaint. EAI affirmatively states that all charges equitably apportioned to Comcast for the safety inspections were necessitated due to the shoddy construction and poor maintenance practices followed by Comcast which resulted in electric service outages and emergency customer calls experienced by EAI.⁵⁵⁰

317. EAI denies the allegations contained in **Paragraph 110** of the Complaint. EAI affirmatively states the following:

- (i) Comcast was allocated costs for a small amount of time spent by USS to visually inspect poles which did not have Comcast attachments due to the fact that Comcast refused to provide EAI or USS with Comcast's strand maps showing the location of attachments as required under Comcast's Franchise Agreement with the City of Little Rock. This was part of Comcast's "catch me if you can" business strategy. EAI and USS repeatedly requested Comcast to provide its strand maps and Comcast refused to do

⁵⁴⁸ See *id.*

⁵⁴⁹ Declaration of David B. Inman at ¶ 29.

⁵⁵⁰ Comcast trouble tickets attached as Exhibit "90."

so.⁵⁵¹ In fact, 12,592 attachments were found to have been made by Comcast without any *authorization or permit from EAI.*⁵⁵² Any additional costs of inspecting poles without Comcast attachments in order to determine the location of its attachments are a direct result of Comcast's refusal to provide its strand maps to EAI and USS and also making attachments without authorization from EAI.

(ii) EAI also allocated costs for a small amount of time spent by USS to inspect poles owned by incumbent local exchange carriers with EAI and Comcast attachments solely to determine if any Comcast facilities had been placed within space allocated to and paid for by EAI. EAI also directed USS to measure mid-span clearances of cable, if necessary, between poles owned by EAI and the ILEC.⁵⁵³ For all circuits inspected involving Comcast cable plant, there are 53,235 poles of which 46,682 are owned by EAI and 6,553 are owned by ILECs.⁵⁵⁴

318. EAI has properly and equitably allocated inspection costs among third-party attachers under the formula described above.⁵⁵⁵

319. The safety violations found by USS have been accurately reported in sufficient detail as necessary for Comcast to be able to make corrections for safety violations.⁵⁵⁶ During the meeting between representatives of EAI, USS and Comcast, held on January 18, 2002, prior to beginning the full safety inspections, EAI advised Comcast that USS could invoice Comcast

⁵⁵¹ See letter from Webster Darling, Senior Counsel, Entergy Arkansas, Inc., to Kyle Birch, Senior Counsel, Comcast, dated August 4, 2003, attached as Exhibit "73;" Declaration of Tony Wagoner at ¶ 9.

⁵⁵² Declaration of David B. Inman at ¶40.

⁵⁵³ Declaration of Wilfred Arnett at ¶ 9.

⁵⁵⁴ Declaration of Wilfred Arnett at ¶ 2.

⁵⁵⁵ Declaration of David B. Inman at ¶ 31.

⁵⁵⁶ Declaration of Tony Wagoner at ¶ 18.

directly for safety inspection costs to avoid EAI incurring administrative costs associated with the billing process. EAI further advised Comcast at this meeting that if EAI became involved in generating and sending invoices to Comcast billing for safety inspection costs, Comcast would be billed an additional 5% of safety inspection costs for EAI's overhead. This 5% overhead charged was subsequently increased to 8% beginning in April 2004 to account for EAI's general costs to process and issue payments, generate invoices, and for other accounting activities.⁵⁵⁷

320. Comcast was found to have 12,592 unauthorized attachments during the course of the safety inspection. On May 19, 2004, EAI billed Comcast the amount of \$177,439.18 representing attachment rental for the year 2004, inclusive of unauthorized attachments. Comcast paid the amount of \$133,870.86, which is equal to the attachments rental paid by Comcast for the year of 2002. To date, there remains past due and owing by Comcast to EAI the amount of \$43,568.32 in unpaid pole rental.⁵⁵⁸

321. Also, on October 4, 2004, EAI billed Comcast the amount of \$341,623.88 representing back rental payments for 12,592 unauthorized attachments for the years 1999 (the date of the prior pole attachment count) through and including 2003 with underpayment interest thereon pursuant to IRS Rev. Rul. 2004-26.⁵⁵⁹ At the request of Comcast, David B. Inman, Joint Use Administrator, EAI, also sent Comcast a CD containing the location and number of all Comcast attachments in order that Comcast could verify 12,592 unauthorized attachments.⁵⁶⁰ USS also

⁵⁵⁷ Declaration of David B. Inman at ¶ 37.

⁵⁵⁸ Declaration of David B. Inman at ¶ 40.

⁵⁵⁹ See letter from David B. Inman, Joint Use Administrator, Entergy Arkansas, Inc., to Mark Grimmett, Director of Business Services, Comcast, dated October 4, 2004, with invoice attached; See also calculation of back rental payment with underpayment interest attached as Exhibit "74."

⁵⁶⁰ Declaration of David B. Inman at ¶ 38.

sent Comcast information with respect to the two sample circuits in order that Comcast could verify the number of attachments on a sample basis.⁵⁶¹ All of this information concerning attachments was provided by EAI and USS to Comcast despite the clear terms of Section 7.2 of the applicable pole attachment agreements which state that the accuracy of the perpetual inventory of number of attachments is the responsibility of the cable company.⁵⁶² In response to receiving this information and invoice for back billed rental, on October 15, 2004, Mark Grimmatt, Director of Business Operations, Comcast, advised that Comcast would need time to verify the accuracy of the invoice for back billed rental and that Comcast would complete its review as soon as possible. Mr. Grimmatt also questioned whether any of the unauthorized attachments were from Comcast attachments on certain joint use poles which EAI had assumed ownership of after abandonment by other companies such as SBC, from 1999 through 2003.⁵⁶³ In response, EAI affirmatively states that to the best of its knowledge and belief EAI has not assumed ownership of other joint use poles, whether owned by SBC or any other pole owner, from 1999 through 2003.⁵⁶⁴ To date, Comcast has failed and refused to pay any amount of back rental or underpayment interest on past due rentals for the 12,592 attachments.⁵⁶⁵

⁵⁶¹ Declaration of Tony Wagoner at ¶ 18.

⁵⁶² See Section 7.2 – Inventory of Cable Company Contacts of Exhibits “2A” - “2C” of the Complaint.

⁵⁶³ See letter from Mark Grimmatt, Director of Business Services, Comcast to David B. Inman, Joint Use Administrator, Entergy Arkansas, Inc., dated October 15, 2004, attached as Exhibit “75.”

⁵⁶⁴ Declaration of David B. Inman at ¶ 42.

⁵⁶⁵ Declaration of David B. Inman at ¶ 40.

322. EAI admits the allegations contained in **Paragraph 111** of the Complaint. EAI affirmatively states that there are 47,413 safety violations which have been reported to Comcast for correction and, to date, Comcast has only corrected 6,797.⁵⁶⁶

323. EAI admits the allegations contained in **Paragraph 112** of the Complaint only to the extent that USS has completed its initial safety inspection of certain circuits within the areas served by Comcast but denies the remaining allegations contained in Paragraph 112 of the Complaint.

324. EAI denies the allegations contained in **Paragraph 113** of the Complaint. EAI affirmatively states that, to date, Comcast has corrected only 6,797 safety violations from a total of 47,413 reported violations.⁵⁶⁷ EAI further states that 29,398 of these reported safety violations involved violations of the clearance requirements of the NESC.⁵⁶⁸ All clearance violations reported to Comcast for correction were directly caused by the incorrect placement or maintenance of Comcast cable and all are violations of the NESC under any edition.⁵⁶⁹ EAI states that many, if not all, of the reported safety violations should have been identified and reported by Comcast to EAI as a standard industry practice as part of the upgrade performed by Comcast which began in 1999.⁵⁷⁰ EAI further states that Comcast has been repeatedly advised that if Comcast disputes any specific findings of USS regarding safety violations, these matters should be brought to the attention of USS on a case-by-case basis and resolved. To date, Comcast has contested very few violations and continues to speak in broad generalities

⁵⁶⁶ Declaration of Wilfred Arnett at Attachment C.

⁵⁶⁷ Declaration of Wilfred Arnett at Attachment C.

⁵⁶⁸ Declaration of Wilfred Arnett at Attachment C.

⁵⁶⁹ Declaration of Wilfred Arnett at ¶ 23; Declaration of John Tabor at ¶ 20.

⁵⁷⁰ Declaration of Tony Wagoner at ¶ 23.

concerning its objections to violations rather than addressing its objections to specific pole violations.⁵⁷¹

325. EAI denies the allegations contained in **Paragraph 114** of the Complaint. EAI affirmatively states there were 5,745 violations reported to Comcast relating to installation of anchors and 1,175 of these have been corrected by Comcast.⁵⁷² EAI has never agreed to allow Comcast to attach guy wires to EAI anchors unless special written permission is obtained from EAI in accordance with Section 2.4(D) of the pole attachment agreement. Written permission is required to ensure that the additional load placed on EAI anchors does not exceed the permitted load requirements of Section 26 – Strength Requirements of the NESC.⁵⁷³ EAI has never given written or verbal permission to Comcast or its predecessors in interest to attach to EAI anchors.⁵⁷⁴ Approximately one half of these violations are for locations where Comcast has no guy wire or anchor at all to support the unbalanced load on the pole caused by attachments made by Comcast.⁵⁷⁵ The balance of these violations are for locations where Comcast has “piggy-backed” their guy wire onto EAI’s anchor without permission and without performing any load analysis to determine whether the additional load violates the NESC.⁵⁷⁶ An overloaded anchor

⁵⁷¹ Declaration of Wilfred Arnett at ¶ 32.

⁵⁷² Declaration of Wilfred Arnett at Attachment C.

⁵⁷³ Declaration of Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc. at ¶¶ 61-62.

⁵⁷⁴ Declaration of Gary Bettis at ¶ 23.

⁵⁷⁵ Declaration of Tony Wagoner at ¶ 47.

⁵⁷⁶ Declaration of Tony Wagoner at ¶ 47.

could either break or pull out of the ground which could in turn result in poles breaking or whole pole lines collapsing.⁵⁷⁷

326. EAI denies the allegations contained in **Paragraph 115** of the Complaint. EAI affirmatively states that:

(i) There were 6,940 violations reported to Comcast related to bonding and 671 of these have been corrected by Comcast.⁵⁷⁸ Section 2.7 of the pole attachment agreement requires Comcast to install a bonding wire on every pole where a vertical ground wire exists. Bonding on more than four poles in a mile is a reasonable standard for reasons of safety and reliability.⁵⁷⁹ Also Section 6.9 of the Recommended Practices for Coaxial Cable Construction and Testing, Second Edition, published by the Society of Telecommunications Engineers provides that "the messenger of the coax cable shall be bonded to the telephone strand or other existing pole grounds in accordance with the utility company pole-lease agreement." Requiring bonding on every pole where a vertical ground wire exists ensures that servicemen of EAI and non-qualified personnel of Complainants, contractors and subcontractors are protected from injury that may be caused by electrical potentials. The Complainants have argued that bonding wire or vertical ground wires may pose a hazard to communication workers who come in contact with the ground wires which may carry electrical current. However, the purpose of the

⁵⁷⁷ Declaration of Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc. at ¶¶ 61-63.

⁵⁷⁸ Declaration of Wilfred Arnett at Attachment C.

⁵⁷⁹ Declaration of John B. Dagenhart, Chair of Subcommittee 2 – Grounding of the Institute of Electrical and Electronics Engineers, Inc., at ¶¶ 14-17; Declaration of Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc. at ¶ 56.

ground wire is to bleed off and carry electrical currents to the ground from facilities attached to the pole which should not be energized (i.e. cable messengers). Bonding cable plant to each of EAI's vertical grounds ensures that the cable plant does not become energized by accident or placement of cable too close to power without having a direct and safe path to bleed the unwanted electricity to ground. This also ensures that there is no difference in electrical potentials between the facilities at the pole for reliability purposes.⁵⁸⁰ Section 2.7 of the pole attachment agreements further provides that the Complainants are responsible for instructing their personnel working on EAI poles of the dangers involved in bonding its wires to EAI's vertical ground wires and to furnish adequate protective equipment to its personnel to prevent bodily harm.

(ii) On information and belief, there were 8,795 violations reported to Comcast relating to service drops and 1,104 have been corrected by Comcast. Of the total service drop violations, 4,508 of these violations involve separation issues between the drop and an energized facility at the pole. Also, 1,379 of these violations involve mid-span separations between the drops and power conductors which were never in compliance with the NESC. EAI and USS have repeatedly advised Comcast that if their engineers dispute a particular violation, EAI and USS will consider these violations on a case-by-case basis provided that a professional electrical engineer licensed in the State of Arkansas certifies in writing that there is no violation.

(iii) There were 3,923 violations reported to Comcast relating to guy markers and 559 have been corrected by Comcast. The locations which were considered violations were

⁵⁸⁰ Declaration of John B. Dagenhart at ¶ 17.

subject to pedestrian traffic and require the placement of guy markers on the downed guy wires for purposes of visibility and obvious safety reasons.⁵⁸¹ Again, EAI and USS have repeatedly advised Comcast that if its engineers dispute a particular violation, EAI and USS will consider these violations on a case-by-case basis provided that a professional electrical engineer licensed in the State of Arkansas certifies in writing that there is no violation.

327. EAI denies the allegations contained in **Paragraph 116** of the Complaint. The cost to correct the safety violations and post-inspection work is largely dependant upon the actions or inactions of Comcast. If, as has been the case in recent past, Comcast is unable to correct violations properly or creates additional violations on the first attempt, post-inspection work will accordingly be more costly.⁵⁸² For example, in one instance Comcast contractors attempted to correct a guying/anchoring violation by running the guy wire through a culvert and covering it with rocks.

328. EAI admits that efforts to negotiate a resolution with Comcast have been fruitless as alleged in **Paragraph 117** of the Complaint. EAI denies the remaining allegations contained in Paragraph 117 of the Complaint. EAI affirmatively states that the Complainants have not attempted to negotiate in good faith.

329. EAI admits that there have been meetings, phone calls, and correspondence between representatives of EAI, USS, UCI, and Comcast, and that Ronnie Colvin sent a letter to Hugh McDonald in Spring 2004, as alleged in **Paragraph 118** of the Complaint. EAI denies the

⁵⁸¹ Declaration of Wilfred Arnett at Attachment C.

⁵⁸² Declaration of Wilfred Arnett at ¶ 35 and Attachment K.

remaining allegations contained in Paragraph 118 of the Complaint. EAI affirmatively states that Mr. McDonald was well aware of Comcast's failure and refusal to correct reported safety violations and to pay any amount of inspection costs invoiced to Comcast prior to receiving Mr. Colvin's letter referenced to in Paragraph 118 of the Complaint.

330. EAI admits that the parties met on May 26, 2004, as alleged in **Paragraph 119** of the Complaint. EAI denies the remaining allegations contained in Paragraph 119 of the Complaint. EAI affirmatively states that the discussions at the meeting were focused on concessions relating to EAI engineering specifications for existing Comcast cable plant which EAI may be willing to consider. The representatives attending the meeting decided to form a committee of engineers of EAI, USS, UCI, and Comcast to continue to meet concerning these engineering specifications. Approximately five minutes of the meeting involved EAI requesting Comcast to make a commitment for a good faith payment toward their allocated portion of the safety inspection costs. Of course, Comcast representatives simply ignored this request and did not respond to EAI in any manner at the meeting. Nor was Comcast willing to make any commitment for progress towards correcting safety violations.⁵⁸³ This meeting further demonstrates Comcast's idea of negotiating in good faith which is simply to attempt to obtain concessions by EAI without making any commitment towards issues critical to EAI in making corrections to safety violations and payment of inspection costs.

331. EAI admits that EAI attempted to negotiate engineering standards in good faith at the meeting held on May 26, 2004, and that EAI stood firm on its demand for payment of the inspection costs which had been equitably allocated to Comcast as alleged in **Paragraph 120**.

⁵⁸³ Declaration of David B. Inman at ¶ 28.

332. EAI admits the allegations contained in **Paragraph 121** of the Complaint. EAI affirmatively states that the letter sent by Mr. McDonald dated July 27, 2004, to Ronnie Colvin, referenced in Paragraph 121 of the Complaint was in response to a letter sent by Ronnie Colvin to Mr. McDonald dated July 16, 2004, in which Mr. Colvin, as Comcast's idea of good faith, offered to place one third of the inspection costs invoiced to Comcast in an escrow account pending completion of ongoing discussions between the engineering representatives of Comcast and EAI.⁵⁸⁴

333. EAI admits that the parties have not resolved this dispute as alleged in Paragraph 122 of the Complaint. EAI denies the remaining allegations contained in **Paragraph 122** of the Complaint. EAI affirmatively states that Comcast made a settlement offer to EAI by way of letter dated August 4, 2004, to Mr. McDonald, President of EAI, which was rejected. EAI affirmatively states that the so called "global solution" was sent by a letter written on behalf of Ronnie Colvin, Comcast Vice-President and General Manager, dated August 4, 2004, to Mr. McDonald.⁵⁸⁵ Comcast's idea of good faith in reaching resolution as suggested in this letter includes: (i) Comcast would be allowed to self police its corrections by way of post-inspecting its own corrections of violations; (ii) EAI would be required to provide Comcast with certification that the inspection had been completed and that corrections had been performed to the satisfaction of EAI based solely upon Comcast's notification to EAI and sign off by Comcast's own contractor that the corrections had been completed without EAI having the opportunity to perform a post-inspection; (iii) Comcast would only be required to pay one half of

⁵⁸⁴ See letter from Ronnie Colvin, Vice-President and General Manager, Comcast, to Hugh McDonald, President, Entergy Arkansas, Inc., dated July 16, 2004, attached as Exhibit "41."

⁵⁸⁵ See letter from Ronnie Colvin, Vice-President and General Manager, Comcast, to Hugh McDonald, President, Entergy Arkansas, Inc., dated August 4, 2004, attached as Exhibit "42."

the amount of inspection costs invoiced through June 7, 2004; (iv) EAI would be prohibited from performing another inspection of cable plant at the expense of Comcast until 2013. Comcast's suggested "global solution" did not address the 12,592 unauthorized attachments made by Comcast nor the more than 170 attachments made by Comcast to transmission towers owned by EAI in Little Rock, Arkansas in direct breach of the pole attachment agreement and without any rental payment made by Comcast to EAI for any of these unauthorized attachments.

334. **EAI denies the allegations contained in Paragraph 123** of the Complaint. EAI affirmatively states that Comcast has not made any attempts to negotiate these disputes in good faith and that EAI has in every instance attempted to comply with this Commission's previous rulings.

ALLIANCE

335. With respect to **Paragraph 124**, EAI admits that its experience with Alliance is sadly similar to its experience with Comcast, in that Alliance has refused to cooperate with EAI in identifying the location of Alliance's attachments, refused to rectify the numerous attachment violations uncovered, and refused to pay the contractually agreed upon costs. EAI admits that Alliance is attached to fewer poles than Comcast and that Alliance is attached to EAI facilities on nine separate distribution circuits and that the majority of these circuits are in rural areas, with the exception of circuits in the cities of Plumerville and Greenbrier. On information and belief, EAI admits that Alliance has fewer subscribers than Comcast. EAI denies the remaining allegations of paragraph 124 of the Complaint.

336. On information and belief, EAI admits that the majority of Alliance's systems are rural but is without information sufficient to form a belief as to the remaining allegations in the first sentence of **Paragraph 125** of the Complaint and therefore denies same. EAI denies the remaining allegations of paragraph 125 of the Complaint, but affirmatively states that Alliance's obligations to EAI are just, reasonable, nondiscriminatory and past due.

337. While objecting to Complainants' characterization of "Targeted Communities," in **Paragraph 126**, EAI admits that Alliance serves the Arkansas cities of Plumerville and Greenbrier.

338. As to **Paragraph 127**, EAI affirmatively states that Alliance has attachments on 8,517 poles in the area of Plumerville and Greenbrier.⁵⁸⁶ EAI is without information sufficient to form a belief in the remaining allegations of paragraph 127 of the Complaint and therefore denies same.

339. EAI and Alliance are parties to a 1991 pole attachment agreement (the "Alliance Agreement") as stated in **Paragraph 128**, but EAI is otherwise without information sufficient to form a belief in the remaining allegations of paragraph 128 of the Complaint and therefore denies same.

340. EAI is without information sufficient to form a belief as to the allegation that Alliance's Plumerville system was built prior to 1991 and therefore denies that allegation in **Paragraph 129**. EAI denies that the system was actually constructed according to any known engineering specification. EAI denies that Alliance's failure to abide by the terms of the pole attachment

⁵⁸⁶ Declaration of John Tabor at ¶ 16.

agreement were not in dispute prior to 2002. EAI affirmatively states that instead, approximately one year before any test safety inspection was performed in Plumerville, Brad Welch with EAI contacted Jeff Browers with Alliance regarding Alliance's attachment safety violations in its service area. At that time, Mr. Welch offered to work with Alliance in correcting the numerous violations in those circuits. Despite that good faith offer, Alliance never responded and did not correct the violations.⁵⁸⁷ EAI denies the remaining allegations of paragraph 129 of the Complaint.

341. EAI is without information sufficient to form a belief as to the allegation that Alliance's Greenbrier system was built in approximately 1998 and therefore denies that allegation in **Paragraph 130**. EAI denies that it permitted Alliance or its predecessor to make attachments that were not in compliance with the terms of the pole attachment agreement. EAI further denies that Alliance's attachments were installed in compliance with then-current NESC standards. EAI has requested that Alliance identify the NESC standards with which it contends its systems comply. Despite this request, Alliance has failed to identify any such alleged NESC standards. EAI affirmatively states that, under the terms of the pole attachment agreement, Alliance agreed to comply with the pole attachment agreement's standards governing anchors, bonding and power supply attachment, regardless of the terms of the minimum NESC standards. EAI affirmatively states that Alliance has failed to meet either the requirements of the pole attachment agreement or any applicable NESC standards as regarding its attachments. EAI denies that it waived or consented to Alliance's violations of the pole attachment agreement. For example, approximately one year before any test safety inspection was performed by USS, Brad

⁵⁸⁷ Declaration of Brad Welch at ¶ 10.